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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/941,589

08/30/2001

Elisabeth Picard-Lesboueyries

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10/16/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 10/16/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/941,589

Applicant(s)

PICARD-LESBOUEYRIES ET AL.

Examiner

Shaojia A. Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

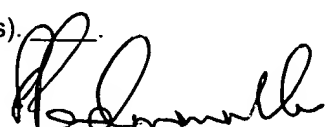
NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-29 (all).Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

10/11/02

Advisory Action

This Office Action is a response to Applicant's amendment and response after FINAL filed on October 2, 2002.

5. Applicant's remarks filed March 4, 2002 with respect to the rejection of claims 1-29 made under 35 U.S.C. 103(a) as being unpatentable over 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahms et al. (5,911,981) and Erilli et al. (5,629,279) and Ribier et al. (5,601,833) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated July 2, 2002.

Again, Applicant's arguments that Dahms neither teaches nor suggests surfactant having the claimed paracrystalline phase, nor does teach or suggest thermally stabilizing foaming cream compositions with such a surfactant system, are not found convincing. Dahms et al. clearly discloses a stable foaming composition in an aqueous medium comprising a surfactant system generating paracrystallin phase such as direct hexagonal phase for cleaning skin or hair including removing a greasy soil from skin or hair. Moreover, thermal stabilization is merely one of inherent properties of a composition herein, which is not considered a limitation to a composition, since it is well settled that recitation of an inherent property of a composition will not further limit claims drawn to a composition.

Contrary to Applicants' assertion that "the hexagonal structures in Dahms are unstable bubbles, not a paracrystalline phase", Dahms et al. discloses a stable foaming composition in an aqueous medium comprising a surfactant system generating

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paracrystallin phase such as direct hexagonal phase for cleaning skin or hair including removing a greasy soil from skin or hair (see abstract, col.1 lines 5-16, col.2 lines 8-15 and 18-20, fig. 2, col.3 lines 6-13 and 63-66, col.10 lines 34-35, 45, 54-55 and col.13 lines 35-36). It is noted that the instant claims are directed to a paracrystalline phase in a foaming composition.

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). See MPEP 2145. in the instant case, as discussed in the Final rejection, the claimed invention is clearly obvious in view of the prior art.

As discussed in the Final Rejection, Applicant's data shown in the Examples 1-2 of the specification at pages 26-33 herein have been fully considered with respect to the nonobviousness and/or unexpected results of the claimed invention over the prior art but are not deemed persuasive for the reasons below. Examples herein provide no clear and convincing evidence of nonobviousness or unexpected results over the cited prior art since there is no comparison to the same present. Moreover, Examples herein merely demonstrate two particular compositions within the instant claims. Thus, the evidence in the examples is also not commensurate in scope with the claimed invention and does not demonstrate criticality of a claimed range of the ingredients in the claimed compositions. See MPEP § 716.02(d). Therefore, the evidence presented in

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specification herein is not seen to support the nonobviousness of the instant claimed invention over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
October 11, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER

10/11/02